

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9950 of 1993

with

SPECIAL CIVIL APPLICATION NO.9951 OF 1993

" " " " 9952 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed :--
to see the judgements?
2. To be referred to the Reporter or not? :--
3. Whether Their Lordships wish to see the fair copy :--
of the judgement?
4. Whether this case involves a substantial question :--
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? :--

SP.C.A.9950/93 A,BAD MUNICIPAL CORPORATION

Versus

A'BAD MUNI. NOKAR MANDAL

SP.C.A.9951/93 A'BAD MUNICIPAL CORPO.

VS

A'BAD MUNI.NOKAR MANDAL

SP.C.A.NO.9952/93 A'BAD MUNI.CORPORATION

V/S

A'BAD MUNI.MAZDOOR ASSOCIATION.

Appearance:

MR MR ANAND for Petitioners : in 3 petitions.
MR MB GANDHI for Respondent No. 1 -----
RULE SERVED for Respondent No. 2 -----
MR KEF GOODIE for Respondent No. 3 -----

CORAM : KUNDAN SINGH, J.

Date of decision: 29/12/1999

ORAL JUDGEMENT

1. These three petitions have been filed, challenging the Award of Shri G.S.Barot, Statutory Arbitrator, which was referred to, by the Government of Gujarat, vide its order dated 12th January, 1984, being industrial dispute, having various terms of reference, under section 10(A) of the Industrial Disputes Act. Shri I.G.Thakor, Statutory Arbitrator, submitted his report dated 31/12/1992. As the common issue has been involved in all these three petitions, they are being decided and disposed of by this common judgment.

2. Ahmedabad Municipal Corporation and the respondents agreed to refer the dispute to the Statutory Arbitrator, and they have agreed that the decision of the Arbitrator shall be binding on them.

3. The SP.C.A.No. 9950 of 1993 was filed by the Ahmedabad Municipal Corporation against (1) Ahmedabad Municipal Nokar Mandal (2) Ahmedabad Municipal Mazdoor Association and (3) Gujarat Municipal and Panchayat Kamdar Association. The SP.C.A.No. 9951/93 was filed by the Ahmedabad Municipal Corporation and Sheth Maneklal Jethabhai Pusthakalay, a public charitable trust, which is added by the Corporation, against Ahmedabad Municipal Nokar Mandal. The SP.C.A.No. 9952 of 1993 was filed by

Ahmedabad Municipal Corporation alongwith Ramaben C. Shelat, Administrative Officer of Municipal School

Board, being added by Ahmedabad Municipal Corporation, against Ahmedabad Municipal Mazdoor Association.

4. The Government of Gujarat, by its order dated 24th January, 1984, referred Industrial dispute having various terms of the reference to the Statutory Arbitrator, under section 10-A of the Industrial Dispute Act. Shri G.S. Barot was appointed as a Statutory Arbitrator pertaining to the agreement between the parties. In all, 60 matters were referred to him, but the Arbitrator has given award in as many as 19 cases in Parts 1 to 19, and all three petitions are in respect of the term No.4, which reads as under :-

"To examine the cases of anomalies arising out of the award of Shri I.G. Thakor, which still survive which is supposed to rectify the same. "

According to the petitioners, the reference was confined to the Item No.4 of the award only in relation to the anomalies arising out of the award of Shri I.G. Thakor, which still survives. It is stated that the Arbitrator has dealt with certain matters without reference to the award of Shri Thakor and without pointing out any anomalies in that respect, but, is only a general statement, would appear from the order dated 12th January, 1984.

5. The parties were given an opportunity to lead their evidence after analysing the material available on the record, and the Arbitrator gave its award on 19 matters.

6. The contention of the learned counsel for the petitioners is that the jurisdiction of the Statutory Arbitrator is confined to the terms of the reference. The Arbitrator can not go beyond question referred to in the name of hardships or incidental matters as stated above. The Arbitrator has no powers or inherent powers to deal with the pay scale or revision of any category of any employment, which is not covered by Thakor award. The learned counsel for the petitioners has referred several items which have been decided by the Arbitrator and the Arbitrator has not discussed material on the record, and the matter was not even referred to, and that was no anomaly arising out of Thakor award. Hence, the Statutory Arbitrator has gone beyond the jurisdiction and decided the matters, arbitrarily which were not in his jurisdiction. The order passed by the Arbitrator is without jurisdiction, and is not sustainable in the eye

of law. The arbitrator has found similarity of employees of the petitioner Corporation with the employees of similar type in other departments of the Corporation petitioner, or Government department on comparison but he failed to consider onerous duties, extensive size of the department compared, qualification, experience, knowledge, technical knowledge, specialisation in particular line or type or categorised employment, and awarded same benefit of pay scale etc to them also. For instance, in the Sp.C.A.No.9951/93, the learned counsel for the petitioner referred to the cadre of office Superintendent, office Secretary and Accountants of M.J.Library examined by the Arbitrator in the award. These posts were subsequently created, while Thakor award was made in the year, 1976, i.e. the Office Superintendent of M.J.Library, which has been compared with the post of Office Superintendent of the Corporation. This post of Office Superintendent in M.J.Library was created in June, 1983, by promoting the senior most Head Clerk. The qualification required for the Head Clerk was matriculation only. In the office of the Office Superintendent of M.J.Library 70 to 80 persons are working, while not less than 200 persons are working in the office of the Office Superintendent of the Corporation, and in the same Department, the number of persons exists, is more than 1000 persons. As such, magnitude of the work of two office Superintendents (1) Library and (2) Corporation is absolutely uncomparable. The arbitrator has compared the office of the Superintendent of both the Offices of Library as well as the Corporation and on the basis of comparison, they were placed at the same category, though this comparison is totally unreasonable. As such, conclusion of the Arbitrator is arbitrary. Similarly, the Office Secretary of M.J.Library has been compared and placed in the same category with the office Secretary of the Corporation, working in the V.S.Hospital, though the post of the office Secretary of the Library was created in the year 1983, and no anomaly arises from the new post of office Secretary created, and that is not covered within the terms of the reference, pertaining to the anomaly, and the comparison of these two posts of Office Secretaries is beyond jurisdiction and can not be compared at all. The Office of the Office Secretary in M.J.Library is much a smaller organization compared to the larger hospital. Similarly, Accountant of M.J.Library has been compared with the Accountant of the Corporation and other Institution of the Corporation. The Accountant of the M.J.Library can not be compared with the Accountant of the Corporation or any other Institutions under the Corporation. In the matter of the award, division of

small unit cannot be compared with large units in view of the legal position of the Industrial law.

6. In the Petition No.9950 of 1993, the hard cases have been considered by the Arbitrator, though they were not referred to in the agreement and no reference was made to resolve anomalies or hardships, and incidental matters. He referred the higher pay scale given to Electrician Wireless(Fire Brigade) , Ahmedabad Municipal Corpo. on the basis of the qualification and experience. The Electrician Wireless does not deserve the same salary as drawn by the Electricians. The comparision made by the Arbitrator is not reasonable at all. Similarly also, Auto-Electrician has been compared with the Radio Mechanic (Fire Brigade, AMC). The qualification of Radio Mechanic is Second class Wireless Certificate and the required qualification for the post of Electrician in the Light Department is First class wireless certificate. The duties of Radio Mechanic are required in the State service. The duties of Radio Mechanics in State service are much more onerous and much more extensive as they have to cover much larger area. The Arbitrator is not justified to revise the pay scale of either category by comparing them with some other unrelated category in the Corporation service, or if no such category is available then comparing them with the State services. In the similar manner, the cadre of Drainage Linemen Engineering Department (AMC), and Mukadams of AMC and other Institutions have been compared with the persons working in other departments. The anomaly has been considred on the assumptions that all the Mukadams have same job and has required the same qualification. Similarly, Assistant Binder-cum-Peon (Record Section-Accounts-Department, AMC), which was a post of peon, who were not doing binding work, however, Arbitrator has revised the pay scale of this category of employees above that of the peons. Similarly, Laboratory Assistants working in the Diagnostic Centres-cum-Polyclinic are given revised pay scale equivalent to the pay cales of Laboratory Assistants working in the L.G.Hospital and Shardaben Hospital, though the comparative duties of each cadre are totally different. In the similar manner, the employees in the cadre of Fitter-II, in the Central Workshop of Ahmedabad Municipal Corporation, with Fitter-II of AMTS, AMC Turner -II with Mechanist of AMTS, Senior Scientific Assistant Central Laboratory, Welfarecum-Labour Officer, AMC, Senior Store Clerk in Smt.SCL General Hospital, AMC, Station Officer (Wireless), Fire Brigade AMC have been compared with the similar cadre of other department and revised pay scale has been given, though some of the

cadres were created later on and were not available at the time of Thakor Award. Thus, the Arbitrator has no jurisdiction, even then, they have been given revised pay scale.

7. Similarly, in the petition No.9952/93, it is submitted that the post of Jr.Accountant-School Board and Jr.Accountants working in the Corporation are different, but they are compared by the Arbitrator in the same cadre, though the post of Jr.Accountant in the School Boards are filled in by promotion ,whereas the post of Jr.Accountants in the Corporation are filled in by direct recruitment.

8. The learned counsel Mr.Gandhi for the respondents contended that the award passed by the Arbitrator is just and proper and the Arbitrator has not exceeded his jurisdiction, in as much as vide Annexure A to the notification dated 12th January,1984, 7 matters have to be considered by the Arbitrator, and the arbitration is not only in respect of Item No.4, but he has to consider 7 items mentioned in the Annexure -A in the Notification dated 12/1/1984. The Article No.4 is in respect of the anomalies arising out of the award of Mr.I.G.Thakor. The Arbitrator has to examine the cases of anomalies and to suggest steps to rectify the same. As such Arbitrator gave his award within his jurisdiction and that is not beyond his jurisdiction, and so far as anomalies and hardships are concerned, that is relating to incidental matters, as referred in sub-section (4) of Section 10 of the Industrial Dispute Act. Once the Arbitrator submits his report and that report if accepted and published in

the official Gazette, then it is final under section 17(2) of the Act, and that can not be challenged in the Court in any manner whatsoever. In the Arbitration Agreement, there is a clause that parties have agreed that the decision of the Arbitrator shall be binding to the parties. The learned counsel, as such contended that the Corporation petitioner is barred by principles of estoppel to question the decision of the Arbitrator.

8. I have considered the rival contentions of the parties and perused the relevant record.

9. So far as the jurisdiction of the Statutory Arbitrator under section 10(A) of the Industrial Disputes Act is concerned, in view of the matters for the consideration by the Arbitrator referred to in Annexure -A , 7 matters are to be considered, which are as under:-

1. Whether it is necessary to revise and to revise the existing pay-scales of the workmen/employees of the Corporation, and if so, to what extent.
2. Whether there are any posts for which grant of special pay is justified and if so, at what rates and the special pays attached to certain posts need to be revised, continued, modified or discontinued.
3. Review the quantum of dearness allowance and other allowances payable to the workmen/employees of the corporation.
4. To examine the cases of anomalies arising out of the award of Shri I.G.Thakore, which still survive and suggest steps to rectify the same.
5. To examine as to what should be the policy pertaining to promotion and Selection Grades in all cadres.
6. Whether the Award of the Arbitrator should be effective from 1st May,1980, or any other or dates.
7. While considering the above terms of reference the Arbitrator shall take into consideration the existing financial resources of the Corporation.
10. The Item No.4 requires the examination of the cases of anomalies arising out of the award of Shri I.G.Thakor, which still survives, and the Arbitrator was required to make suggestions for rectification of the award of Shri I.G.Thakor,but, that relates to a status of cadre, grade, pay scale , promotion, selection grade in all cases, and further new creation of posts etc.and that is to be considered and Arbitrator was required to make [suggestions, and that has been done. The Arbitrator has decided and considered 19 awards out of 60, and the remaining have been rejected by the Arbitrator. It appears that they had not filed any Writ Petition or challenged before this Court. Thus, in my opinion, the Statutory Arbitrator acted within his jurisdiction, and he has not acceded beyond his jurisdiction.
11. So far the hard cases and incidental matters are concerned,they are also covered in the matters to incidental matters. Though in this connection, the learned counsel for the petitioner pointed out that the matters incidental thereto, mentioned in sub-sec.(4) of

Sec.10 of the Act are missing in sub-sec.(4) of sec.10-A of the Act. The dispute referred to is under section 10-A and not under section 10 of the Act. The sub-section (4) of Section 10 gives the wider powers to the Arbitrators, than powers conferred under section 10(A)(4) which are narrower, as section 10(4) was introduced in the year, 1952, while section 10-A(4) was inserted in the year 1957, and the Legislature was aware of the incidental matters referred to in sub-section 10(4), even then those powers regarding the incidental powers under section 10-A(4), have not been conferred. But, in my view, it is well settled rule of law that whenever the powers regarding the main matters are conferred, it is always presumed that the incidental matters have also been conferred and it cannot be said that the Legislature has not conferred powers regarding the incidental matters to the Arbitrator under section 10-A(4) of the Act, hence, the Arbitrator was not incompetent to decide the incidental matter. Thus, the contention of the learned counsel for the petitioner is not tenable in the eye of Law, though the learned counsel for the petitioner has relied upon the Commentary by author, Mr.O.P.Malhotra, in the book " The Law of Industrial Disputes " Volume - 1, page 821, wherein it is stated that the Arbitrator has strictly to confine to adjudication to the dispute as referred to him by the agreement of the parties. There is a marked contradiction between S.10 and S.10-A. Hence, an arbitrator is bound to adjudicate on the dispute as specifically referred in terms of the agreement and could not go in to any other matters whether connected with or relevant or incidental to the dispute which was referred to him. (That is said to be based on some decision of the Hon'ble Delhi High Court in unreported judgment).

12. But, I am of the firm view that whenever the main powers are conferred to any authority to exercise, the incidental powers, will always with him to exercise them. In the present case, the Arbitrator has considered hard cases and anomalies, which are also covered in the incidental matters, as referred under section 10-A(4) of the Act.

13. So far as the exercise of the discretionary jurisdiction of this Court under section 226 and 227 of the Constitution of India is concerned, it has been held by the Apex Court, in the decision in case of Mohd.Yunus vs Mohd.Mustaqim, reported in AIR 1984 SC 38 that " a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under

Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited " to seeing that an inferior Court or Tribunal functions within the limits of its authority ", and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under

Art.227 , the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

14. The Arbitrator has adjudicated the dispute regarding anomalies, incidental matters including hard cases on the basis of the material produced by the parties before him. He has analysed, examined, considered with comparison of similar cases in other departments and his findings can not be said irrational or not based on material. Even he has committed some mistake without referring the actual anomalies or some material on record, his findings can not be said illegal or without jurisdiction . He acted within his jurisdiction. Moreover, the Arbitrator was required to make suggestions for the rectification of the I.G.Thakor Award, Government has ample powers to reject any suggestions given by the Arbitrator. The petitioner Corporation had an opportunity to make representation before the State Government to reject or modify any suggestion before the notification is issued.

15. I have already held that the Arbitrator has not acted beyond jurisdiction. As such, this Court is not to exercise the jurisdiction to correct error, if any, he has made any suggestion to rectify the award. Once the parties have agreed that the decision of the Arbitrator shall be binding on them, each party has to honour the Award, even

if it is not barred by the principles of estoppel. It is not proper for the parties to say that the Arbitrator has committed some error. Even the Arbitrator has committed some error, I do not think a good ground for interference by this Court. These petitions lack merits and are liable to be dismissed.

Accordingly these three petitions are dismissed, with no orders as to costs. Rule is discharged and interim order if any, stands vacated.

(Kundan Singh, J)

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